IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22581 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI RAMESHBHAI MARCHAWALA (DETENUE)
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS BANNA DUTTA for MR AR SHAIKH for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/06/2006

This petition is filed by the brother-in-law of the detenue. By filing this petition, the petitioner has challenged detention order of the detenue – Bharatbhai Rameshbhai Marchawala, dated 10-11-2005, by which he is detained as a “bootlegger” under Gujarat Prevention of Anti Social Activities Act [hereinafter referred to as PASA Act]. With the

detention order, the detenue is also served with the grounds of detention. In the grounds of detention, there is a reference to a solitary case pending against the detenue. The aforesaid case is registered with Katar Gam Station being Gunah Register No.III-1099/2005 under the Bombay Prohibition Act. It is alleged that the detenue is dealing in foreign liquor.

Ms.Banna Dutta, learned advocate for the petitioner submitted that except a solitary criminal case, there is no other material available for coming to the conclusion that the detenue is a "bootlegger". She further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the detenue are prejudicial to public order or even tempo of public life is disturbed by his activities. It is also submitted that at the most it can be said that the detenue has violated law and order and not public order. To substantiate her say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in **Darpan Kumar Sharma alias Dharban Kumar Sharma V. State of Tamil Nadu and Others**, reported in **AIR 2003 SUPREME COURT 971**, wherein it is held as under in paragraph 6 :

> "In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Section 379, IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the

> maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

It is not in dispute that except a solitary criminal case, there is neither any statement of independent witness nor any document is available on record to suggest that the activities of the detenue are prejudicial to public health or that by the said activities, the even tempo of life is disturbed. The offence registered against the detenue is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the detenue has violated law and order, and it cannot be said that the detenue has violated public order.

For the foregoing reasons, this petition is allowed. Order of detention dated 10-11-2005 is quashed and set aside. Detenue – Bharatbhai Rameshbhai Marchawala is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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